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## Letter Ruling 95-1: Sale of Electricity for Warehouse Refrigeration

March 10, 1995

### I. Facts

You request a letter ruling on behalf of \*\*\*\*\* (hereinafter "Foods"). Foods warehouses and distributes frozen food and ice cream to retail supermarkets throughout New England. Towards this end, Foods has two warehouses in Massachusetts, \*\*\*\*\* occupying 115,000 square feet of refrigerated storage space. Foods uses over 80% of its electric energy to refrigerate this storage space. Foods must refrigerate the air in its warehouses in order to deliver saleable products to its customers. The refrigeration process itself does not produce a finished product. Foods obtains the products from the manufacturer frozen, uses its warehouse to preserve these frozen products, and then distributes the frozen products to supermarkets. The usefulness of the products depends on the product being maintained unchanged in Foods refrigerated warehouse.

Foods contends that the refrigeration process is a practical and necessary step toward the manufacture of a finished article for sale. Foods argues that its purchase of electricity is exempt from Massachusetts sales tax. We rule that Foods' purchase of electricity used to refrigerate Foods' warehouse storage space for the purposes of preserving frozen food and ice cream is subject to the sales tax.

### II. Discussion of Law

In Massachusetts, the sale of electricity which is consumed and used directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold is exempt, provided that no less than 75% of the electricity consumed is used for the purposes of manufacturing. G.L. c. 64H, § 6(i). For purposes of G.L. c. 64H, § 6(i), an industrial plant is defined as a factory at a fixed location primarily engaged in the manufacture of tangible personal property to be sold in the regular course of business. Id. The initial question presented, then, is whether the refrigeration of storage space for the purposes of preserving frozen food and ice cream is "manufacturing" for Massachusetts sales tax purposes.

The term "manufacturing" is not specifically defined under the sales tax provisions of Chapter 64H of the General Laws. However, the Supreme Judicial Court has described what processes constitute "manufacturing" for local property tax purposes, which the Department has incorporated by regulation specifically for local property and used for sales tax purposes. See Massachusetts regulation 830 CMR 58.2.1: Manufacturing Corporations.

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The Massachusetts Supreme Judicial Court has held that the term "manufacturing" ordinarily and commonly denotes the process of transforming raw or finished materials by hand or machinery and through human skill and knowledge, into something possessing a new nature and name and adopted to a new use. Westinghouse Broadcasting Company, Inc. v. Commissioner of Revenue, 382 Mass. 354, 357 (1981). See also, 830 CMR 58.2.1(6)(b). The Court has also determined that processes which themselves do not produce a finished product for the ultimate consumer may still be deemed manufacturing so long as they constitute an essential and integral part of a total manufacturing process. William F. Sullivan & Co., Inc. v. Commissioner of Revenue, 413 Mass. 576, 579-80 (1992). However, even in such a case, "to constitute an essential and integral part of the total manufacturing process, the process must effect...change and cause a...degree of refinement to the source material.... Id. at 581. See also Joseph T. Rossi Corp. v. State Tax Commission, 369 Mass. 178 (1975).

The refrigeration of frozen products by Foods does not constitute an essential and integral part of the total manufacturing process. Refrigeration of storage space for the purposes of preserving frozen food and ice cream does not effect a change or refinement to the source material as described by the Court. Cf. Fischer Artificial Ice & Cold Storage Co. v. State Tax Commission, 248 Iowa 497, 81 N.W.2d 437 (1957) (maintenance of food at constant temperature was not "processing"). See also Massachusetts Department of Revenue Letter Ruling 84-49.

### III. Conclusion

We conclude that Foods' refrigeration of storage space does not constitute "manufacturing" for Massachusetts tax purposes and Foods' warehouses are not "industrial plants," as that term is defined under G.L. c. 64H, § 6(i). Consequently, the sale of electricity to Foods used to refrigerate storage space in its warehouses is subject to the sales tax.[\[1\]](#)

Very truly yours,

/s/Mitchell Adams

Mitchell Adams  
Commissioner of Revenue

MA:HMP:jd

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[\[1\]](#) For the reasons stated in this ruling, Foods cannot claim an exemption from sales tax under G.L. c. 64H, § 6(j), because its warehouses are not "industrial plants" under the statute. See G.L. c. 64H, § 6(j). Section 6(j), exempts sales of fuel used for heating purposes in an industrial plant. G.L. c. 64H, § 6(j). We do not reach the issue whether fuel, such as, gas, steam or electricity, used for air conditioning, and not heating, purposes comes within the meaning of the exemption under G.L. c. 64H, § 6(j).